

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

TYCO FIRE PRODUCTS LP,

Plaintiff,

v.

AIU INSURANCE COMPANY, *et al.*

Defendants.

Civil Action No. 2:23-cv-02384-RMG

Hon. Richard M. Gergel

AMENDMENT TO CONFIDENTIALITY AND PROTECTIVE ORDER

This amendment to the Confidentiality and Protective Order (ECF 189) addresses the need for production in this case of documents previously produced in the case captioned *In Re: Aqueous Film-Forming Foams Products Liability Litigation*, Master Docket No.: 2:18-mm-2873, District Court of South Carolina (“MDL Lawsuit”) that were, in the MDL Lawsuit, designated as “Department of Defense Distribution Statement F Information,” “Department of Defense Off Site Sampling Data,” “Export Control Information,” or “Highly Confidential – TOG.” The Confidentiality and Protective Order remains in full effect and is amended as follows:

1. Documents or other materials originally produced in the MDL Lawsuit and designated as “Highly Confidential – TOG” under the terms of the MDL CMOs shall be designated as Highly Confidential under the terms of the Confidentiality and Protective Order, without further Bates stamping and without the need for any additional confidentiality designation, and shall not be disclosed to any other person or used for any purposes except as provided in Paragraphs 7 and 9 of the Confidentiality and Protective Order.
2. Documents or other materials originally produced in the MDL Lawsuit and designated as “Department of Defense Distribution F Statement Information” and

“Department of Defense Off Site Sampling Data” under the terms of the MDL CMOs shall retain that designation, without further Bates stamping and without the need for any additional confidentiality designation, and may only be disseminated or disclosed in this Action to U.S. persons, as defined by 22 C.F.R. § 120.15 who also fall into one of the following categories:

- a. Judges, court reporters, court personnel, videographers, and special masters at trial, hearings, arguments, depositions and any other judicial proceedings in the Action;
- b. Counsel of record for the parties in this Action;
- c. Attorneys, secretaries, paralegals, assistants, and other employees in the same firm/company/governmental legal department of such counsel of record, only to the extent reasonably necessary to render professional services in the Action;
- d. One in-house attorney for each party provided the in-house attorney is not involved in product development or competitive decision-making;
- e. Document services and copy vendors not employed by a party or its counsel of record, only to the extent reasonably necessary to assist counsel of record for the parties in rendering professional services in the Action;
- f. Subject-matter experts retained on a testifying or consulting basis for the parties in the Action and their staff, but only to the extent that a document falls into their subject-matter expertise and only to the extent reasonably necessary to render professional services in the Action;

- g. Persons noticed for deposition or who are expected to testify at a hearing in the Action only to the extent that they may receive a subject document on which they are expected to be questioned; and
- h. Employees of the U.S. Department of Justice and contractors of the U.S. Department of Justice to the extent reasonably necessary to assist in rendering professional services for the Action;
- i. Court-appointed mediators and the attorneys, secretaries, paralegals, assistants, and employees of such court-appointed mediators to the extent necessary to render professional services in this Action.

provided that the individuals in categories (c)-(g) must sign Exhibit B to this Amendment to the Confidentiality and Protective Order and provide a copy to counsel of record for the relevant party providing them with the Department of Defense Distribution Statement F Information and Department of Defense Off Site Sampling Data. Each counsel of record who intends to distribute or disclose Department of Defense Distribution Statement F Information or Department of Defense Off Site Sampling Data to individuals in categories (c)-(g) must send to the U.S. Department of Justice attorneys appearing in the MDL Lawsuit a written communication stating which party or parties they represent; that they will keep the signed Exhibit Bs for each individual receiving Department of Defense Distribution Statement F Information or Department of Defense Off Site Sampling Data; and that, if they withdraw from the case, they will ensure the signed Exhibit Bs are transferred to the next counsel of record. If the U.S. Department of Justice, the U.S. Department of Defense, and/or any of its component organizations believe an improper dissemination has occurred, the

federal agency may request to see and must be given no later than the conclusion of the Action any requested signed Exhibit Bs.

3. Documents or other materials originally produced in the MDL Lawsuit and designated as “Export Control Information” under the terms of the MDL CMOs shall retain that designation, without further Bates stamping and without the need for any additional confidentiality designation, and shall not be further disclosed, disseminated, or used for any purpose other than in connection with the preparation for trial and litigation of this Action, consistent with the restrictions on use of “Export Control Information” contained in the Confidentiality and Protective Order as amended herein, and under applicable United States law. Export Control Information shall not be disclosed to any individual who is not a U.S. Person or stored on cloud servers or any media physically located outside of the United States. Through this amendment to the Confidentiality and Protective Order, the parties and their counsel hereby give their assurances that they will implement practices and controls to ensure that access to Export Control Information is restricted to “U.S. persons” in compliance with the International Traffic in Arms Regulations and Export Administration Regulations.

4. The parties may seek to restrict public access to Department of Defense Distribution Statement F Information, Department of Defense Off Site Sampling Data, and Export Control Information contained in documents filed with the Court. Any request to restrict access to such documents must comply with the requirements of the District of South Carolina’s Local Civil Rules. The parties agree to redact Department of Defense Distribution Statement F Information, Department of Defense Off Site Sampling Data, and Export Control Information from any document filed with the Court; except that if the filing party

seeks to have the Court review Department of Defense Distribution Statement F Information, Department of Defense Off Site Sampling Data, and Export Control Information contained within the document, then the document shall be filed under seal pursuant to the District of South Carolina's Local Civil Rules, with the portion of the document that the filing party seeks to have the Court review remaining unredacted. Any Party may from time to time initiate a review of any document(s) or information(s) filed under seal and seek to unseal for the public record any document for which a prior confidentiality designation has been lifted since the time of the under seal filing.

5. To avoid security risks inherent in certain current technologies and to facilitate compliance with the terms of this Confidentiality and Protective Order as amended, all persons with access to Department of Defense Distribution Statement F Information, Department of Defense Off Site Sampling Data, and Export Control Information are prohibited from storing or transmitting any Department of Defense Distribution Statement F Information, Department of Defense Off Site Sampling Data, and Export Control Information in or via any online service (other than counsel or a parties' own firm/corporate email system) that is managed or maintained by any third party other than a litigation support service provider that uses (i) a secure document hosting facility, (ii) encrypted web-enabled software, (iii) secure sharing and collaboration among only authorized users, and (iv) does not employ public cloud computing services. Notwithstanding the foregoing provisions of this paragraph, the parties may temporarily store and/or transmit files with Department of Defense Distribution Statement F Information, Department of Defense Off Site Sampling Data, and Export Control Information to persons authorized to receive Department of Defense Distribution Statement F Information, Department of Defense Off Site Sampling

Data, and Export Control Information as email attachments, via secure FTP, Dropbox and/or Box.com, and/or by way of a third-party vendor that the parties agree may be used for encrypted and secure, domestic transmissions, provided that for any such transmissions the parties take all reasonable steps to protect Department of Defense Distribution Statement F Information, Department of Defense Off Site Sampling Data, and Export Control Information from being disclosed to unauthorized third parties. The use of a third-party vendor may include short-term, incidental storage of files for the sole purpose of transmitting them, provided that the files are promptly deleted upon transmission. The parties may agree in writing to make mutual accommodations under this paragraph.

6. Except as expressly set forth herein, all paragraphs, terms, provisions, and conditions in the Confidentiality and Protective Order are unchanged.

7. Upon entry of a materially identical amendment to the protective order entered in the lawsuit captioned *Century Indemnity Company v. Tyco Fire Products LP*, Case No. 2022-CV-000283 (Wis. Cir. Ct. Marinette Cnty.) (the “Wisconsin Action”), documents designated as “Department of Defense Distribution Statement F Information,” “Department of Defense Off Site Sampling Data,” “Export Control Information,” or “Highly Confidential – TOG” may be produced and/or deemed produced in the Wisconsin Action pursuant to the ORDER REGARDING CROSS DESIGNATION IN WISCONSIN ACTION (ECF 217).

AND IT IS SO ORDERED.

January 31, 2024

Charleston, South Carolina

s/Richard Mark Gergel
Richard Mark Gergel
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Exhibit B

Acknowledgment and Agreement To Receive Department of Defense Distribution Statement F
Information and/or Department of Defense Off Site Sampling Data

____ declares that:

I reside at _____. I am currently employed by _____,
located at _____, and my current job title is _____.

I have read and understand the terms of the Confidentiality and Protective Order entered in this Action as amended ("Amended Protective Order"). I understand and agree to comply with and be bound by the provisions of the Amended Protective Order. I understand that any violation of the Amended Protective Order may subject me to sanctions by the Court.

I will not divulge any information, documents, or copies of Department of Defense Distribution Statement F Information and/or Department of Defense Off Site Sampling Data obtained pursuant to such Amended Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Amended Protective Order. I will not copy or use such information or documents except for the purposes of this action and pursuant to the terms of the Amended Protective Order.

As soon as practical, but no later than 90 days after final termination of this action, I will return to the attorney from whom I have received them any documents in my possession that are Department of Defense Distribution Statement F Information and/or Department of Defense Off

Site Sampling Data and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I declare that I am a U.S. person, as defined by 22 C.F.R. § 120.55.

I further declare that I fall into one of the categories identified in subparagraphs 2(c)-(g) of Amendment to Confidentiality and Protective Order.

I understand that a copy of this agreement will be retained by the counsel of record who provided me with the Department of Defense Distribution Statement F Information and/or Department of Defense Off Site Sampling Data.

I submit myself to the jurisdiction of the above Court for the purpose of enforcing or otherwise providing relief relating to the Amended Protective Order.

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date